

ORIGINAL

(14)
6-4-01
SC

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG

JUN 01 2001

MARY E. D'ANDREA, C
Per gk
DEPUTY CLERK

CLEVELAND HANKERSON

:

vs.

:

CIVIL NO. 1:CV-00-1836, USDC
CRIMINAL NO. 5:91-CR-10-MDGA

DONALD ROMINE, Warden

:

J. Rambo

**GOVERNMENT'S OPPOSITION TO PETITIONER'S
OBJECTIONS TO REPORT AND RECOMMENDATION OF MAGISTRATE**

This is a habeas corpus action by Cleveland Hankerson who is challenging his conviction and sentence based upon Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000). In opposition to the petition, the Government provided exhibits and arguments to establish that Hankerson had failed to present any evidence of "actual innocence" or demonstrate that Apprendi should be applied retroactively.

On April 16, 2001, the Magistrate Judge issued a Report and Recommendation ("R & R") in which he recommended that the petition be dismissed. Hankerson has now filed objections to the Magistrate Judge's Report, stating, without more, that he should be entitled to the retroactive benefit of Apprendi. In that Hankerson has not offered any new legal arguments to demonstrate that Apprendi should be applied retroactively or otherwise demonstrated any error, the Government incorporates by reference

its prior response to the habeas petition in support of the Report and Recommendation.

Accordingly, respondent requests this Court to overrule petitioner's objections and to adopt the April 16, 2001, Report and Recommendation of the Magistrate Judge.

Respectfully submitted,

MARTIN C. CARLSON
UNITED STATES ATTORNEY

Michael T. Solis/ass

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DATE: June 1, 2001

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CLEVELAND HANKERSON :
vs. : CIVIL NO. 1:CV-00-1836, USDC
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===== :

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on June 1, 2001, she served a copy of

GOVERNMENT'S OPPOSITION TO PETITIONER'S
OBJECTIONS TO REPORT AND RECOMMENDATION OF MAGISTRATE

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

Cleveland Hankerson
Reg. No. 83507-020
USP Atlanta
P.O. Box PMB
Atlanta, GA 30315

Shelley L. Grant
SHELLEY L. GRANT
Paralegal Specialist